



**Testimony Submitted by Kevin Warren, President and CEO
Texas Health Care Association
Impacts of COVID-19 on Long-Term Care Facilities
House Human Services Committee
September 25, 2020**

Mr. Chairman and members: Thank you for allowing me this opportunity to submit testimony on the committee's interim charge regarding the state's response to COVID-19 as it relates to emergency regulations that prohibited visitation of residents of long-term care facilities by family members. In addition, this testimony will also address emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.

Representing Skilled Nursing Facilities and Assisted Living Facilities across Texas, THCA appreciates the opportunity to provide testimony and input today regarding the impact of visitation restrictions of residents of long term care facilities because of COVID19.

Reopening for Visitation

It has been 28 weeks since the state of Texas prohibited non-essential visitors from entering skilled nursing and assisted living facilities in Texas. As the state of Texas and its nursing facilities have responded to the evolving challenges of this pandemic, communication to facilities, residents, and resident families has been an important aspect of managing the challenges that family visitation restrictions and other limitations set forth by CMS, CDC, DSHS and HHSC for compliance. The impact that COVID19 could have on the long term care population was identified earlier on, and thus, limitations for visitation and social interaction were implemented.

In May 2020, THCA co-authored a 13-page document of reopening recommendations with LeadingAge Texas. The recommendations were submitted to HHSC for review and consideration as they begun the process for determining a phased in reopening strategy. The recommendations put forth were based upon guidance adopted from other states and addressed issues such as: Phased in visitation, testing, PPE use, communal dining, screening, non-medically necessary trips, salons, and other aspects of a safe reopening plan.

Not until August 2020, was the initial guidance set forth allowing COVID free nursing facilities, who can comply with weekly testing requirements, to have visitors. At this time, only external visitation was allowed. We should be able to find balance earlier between visitation and maintaining health and safety. In addition, when the August announcement was made, it was communicated to families, providers and the general public thru a press release from HHSC. However, there had been no specific guidance released to the providers at the time of this announcement thus placing LTC facilities in a difficult position as families were calling to request visitation when the providers had not been provided the rules for compliance nor the necessary attestation documentation to receive approval.

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When you look at the current data, and we see the steady decline over time in the number of COVID19 residents and staff who have tested positive, providers focused efforts on prevention and mitigation are working. None of them want to see those efforts disrupted while bringing families and residents back together.

With the release of the final rule, there are multiple preparation elements that need to be addressed. Facilities must develop visitation policies, testing/training policies for visitors, additional screening requirements, and data collection requirements as well as implement visitation schedules and coordination. Additionally, facilities will have to submit attestation for approval by the state for certain types of visits. Facilities are actively working to support the new visitation guidance while also ensuring they don't fall out of regulatory compliance as they incorporate the new rules into current requirements.

THCA has submitted a host of questions to the agency in effort to clarify and hopefully simplify the steps necessary while keeping the health and safety of residents and staff as the priority. We understand that an FAQs document for the rule will be released next week at some point and HHSC will have its first webinar on the new rules beginning tomorrow, Friday. With the short time between release of the rule and implementation, the learning curve for preparedness can be pretty steep.

Updates and Conflicting Guidance and Local Ordinances

An additional challenge that has beset nursing home providers throughout the COVID19 pandemic has been the continuous updates to both the federal and state guidance regarding infection prevention and control required for long term care facilities. At both the federal and state levels, the guidance has changed or been updated at least 15 times, while further updates are expected as clinicians and experts learn more about the virus.

In addition to the changing guidance, there have been multiple counties who have put forth their own guidance or local ordinances for nursing facilities in managing COVID19. As an example, in March 2020, Dallas County released an order prohibiting all new admissions for any facility with a COVID+ resident. In addition, the order required immediate notification of all family members and responsible parties, as well as requiring posting "for public access within 30 minutes of identification of a case". Since the initial ordinance requirements released in March, there have been changes to the local order and facilities are now allowed to request approval and apply to become COVID designated facilities with the county if they an established a COVID unit for cohorting residents can apply for this designation. However, the impact in restricting admissions to providers has been felt both economically as well as in the providers' ability to serve as a resource to local hospital partners who have had to looked for placement in neighboring counties.

While nursing facilities have been already been required to notify families, residents and staff when COVID is identified in the facility, variations in reporting requirements based upon local ordinances have required facilities to modify policy according to local guidance. These modifications may not match state requirements thus requiring duplication of effort and possible unintentional errors in reporting or compliance.

Additional challenges that have hampered providers efforts to maintain infection control protocols were the result of local health authority (LHA) assessments and evaluations of facility compliance. It has been

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reported by multiple providers in various parts of the state, that local health authorities have made infection control visits to providers with recommendations have been in conflict with regulatory requirements for long term care facilities. There have also been reports of LHA visits that have concluded with positive findings and recommendations, only to be followed by concerns regarding infection control practices during subsequent HHSC Regulatory Surveyor visits.

HHSC Surveyor Concerns During COVID-19 Pandemic

Throughout the pandemic and to current, THCA has remained in continuous communication with HHSC at multiple levels throughout the agency and we have appreciated their willingness to work with the Association on and thru issues that affect all nursing home providers in Texas. One of the issues that has been a priority topic throughout the pandemic has been surveyor interactions and communication with providers.

As noted in a letter to Deputy Executive Commissioner David Kostroun in May 2020, we raised the concern that “without a dramatic shift in the approach of regulatory services in the field, facilities will face even more difficulty in retaining and/or attracting qualified staff... The level of pressure and stress caused by the duration and danger of this pandemic is far beyond anything we have seen before whether natural disaster or outbreak related”. As the staff are working longer hours and supporting residents physical and emotional wellbeing at a time when loved ones and volunteers are restricted from visiting, it is important that surveyors, while operating in their regulatory capacity, understand the scope and pressures in play.

Ongoing Waiver Recommendations

The second topic requested to be addressed related to the impacts of COVID-19 on Long-Term Care Facilities is as follows: *Review emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.* Waivers have been an important component to relieve the regulatory burden nursing facilities have had to face considering the COVID-19 pandemic. Several waivers should be considered to either stay in place or be modified. THCA also believes some statutory changes should also occur to make clear that, when there is a public health emergency, regulatory requirements are automatically waived.

1. **Visitation:** One of the first waivers that occurred in nursing facilities was the suspension of residents’ right to receive visitors. This was a CMS and HHSC requirement. Clearly, at the onset of the pandemic, the need to restrict the flow of outside visitors into nursing facilities was necessary to protect vulnerable residents. However, restricting visitation to almost zero for a little more than six months had unintended devastating consequences for residents and families. Personal contact is necessary for family and residents alike. Without contact, residents begin to fail, and families prematurely lose relationships with their loved ones. A balance must be struck between protecting residents from a disease like COVID-19 and the negative consequences that directly relate to lack of contact with families and close friends.

THCA would recommend that nursing facilities be allowed to temporarily restrict visitation at any time when it is necessary to protect a resident, other residents, or staff from danger or harm, such as a pandemic or public health outbreak. When the danger or harm has sufficiently subsided, a nursing facility should be allowed to develop policies that allow gradual visitation to occur, starting specifically with family and other essential caregivers.

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2. **NATCEP and Medication Aide Testing Requirements:** HHSC suspended certain Nurse and medication aide training requirements one of which was the requirement related to clinical and skill training in a nursing facility and the requirement of classroom training to be **in person**. Training programs for these essential workers should be allowed to continue by completing the programs online or other virtual methods.
3. **Infection Control:** A lesson learned from the COVID-19 pandemic is that we must be prepared. Although not a specific waiver, THCA believes that there should be a legislative directive to require appropriated agencies to maintain for nursing facilities personal protective equipment (PPE) stockpiles, disease testing statewide, and strike forces for emergency nursing services and disinfecting nursing facilities.
4. **“During a Public Health Emergency”:** Many waivers were implemented as a result of the COVID-19 public health emergency. THCA recommends that there be clear direction that, during a public health emergency, many regulatory requirements be waived without the necessity of a directive from HHSC. Some items to consider are:
 - a. Maintaining licenses and fees until a time certain following the expiration of a public health emergency;
 - b. Suspend continuing education requirements for nurses and administrators; and
 - c. No administrative penalties or fines, unless willful or wanton conduct.
5. **Physician Service Options:** During the crisis created by the COVID-19 pandemic, maintaining physician coverage has been difficult, especially in rural areas. Allowing nurse practitioners and physician assistants to provide services in nursing facilities without physician supervision during a public health emergency would relieve the stress on coverage for these important services.

Mr. Chairman and members of the Committee. We thank you for your attention to long term care and your focus on this important interim charge. We look forward to working with you on the issues as we continue to work together to continuously improve care delivery for nursing home residents in Texas.